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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,621	10/30/2003	Charles Brewer	410-1-014	9892

7590 09/13/2004

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/698,621

Applicant(s)

BREWER ET AL.

Examiner

Susan C. Alimenti

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Haynes et al. (US 5,072,694).

Haynes et al. (Haynes hereafter) discloses a pet house comprising a lower frame 12 with fabric 40 attached thereto forming a floor, and an upper frame 14 co-operable with the lower frame to form an enclosure and removable therefrom. The pet house is supported on legs 32, 34, 18. The upper frame is fitted with fabric cover 36 having an opening 38 allowing the animal to enter and exit the enclosure. Regarding claim 20, the means for staking the housing to a supporting surface is defined as leg 18 readily available to be staked to a ground surface, e.g. a U-shaped stake overlapping leg 18 and engaging the ground.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 4-5, 13, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes.

Haynes discloses the claimed invention except the material of the fabric is not expressly disclosed. Haynes mentions that a preferable material for the top cover is a layered quilted construction that provides insulation (col. 4, lns.40-44) and the fabric for the base could be a cotton duck fabric (col.4, lns.55-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a mesh, polyester, or nylon material since these are known materials in the art and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 13 and 24, Haynes discloses the claimed invention except VELCRO is not utilized to couple the upper frame 14 with the lower frame 12. Hayne instead uses hook members 72 to receive an extension tab 62 of fabric cover 36 (col.5, lns.26-33). The use of VELCRO, especially to couple fabrics together is well-known as an advantageous option for its ease of use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace Haynes' hook 72 and tab 62 system with a simpler VELCRO system in order to make assembly less complicated for the pet owner.

5. Claims 7-12, 14-15, 18-19, 21 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes as applied above, and further in view of Ventura (US 6,098,218).

Regarding claims 7-12 and 18-19, Haynes discloses the claimed invention except the frame structure is different. It is widely known that tent structures, whether used for humans or pets, are available in a wide variety of frame structures. Ventura discloses a housing in the same

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field of invention, having a base frame structure comprising four removable legs 14 coupled to frame members 50, 51, 40 by connectors 52, 42 which are disposed at each of the four corners of the base frame. Ventura's structure allows more versatility than Haynes in collapsing the device, because all the components can be separated and compacted into a smaller traveling/storage size. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' frame structure with Ventura's in order to allow the user to completely deconstruct the frame accommodating a smaller travel or storage space.

Regarding claims 14-15 and 25-26, Haynes as modified discloses the claimed invention except an additional ventilation area and flap covering the entrance is not positively disclosed. Ventura's device offers both a ventilation window 12 and a flap 12 covering the entrance to the housing. These two elements provide enhanced comfort and privacy to the user and are well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' housing by adding a ventilation window in order to provide air flow in hot climates and a flap covering the entrance in order to prevent the animal from being disturbed or scared from external influences.

Regarding claim 21, Haynes discloses the claimed invention except it is not expressly disclosed how the housing would be coupled to the floor. Ventura discloses a well known staking system utilizing a tie line 30 that can be coupled to various holes 48, 16 on the device. This system provides stability to the housing while in use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a staking hole in order to provide stability to the housing. It is further recognized that the

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placement of such a hole in this case would obviously be anywhere that could provide a steadying force to the system.

6. Claims 16 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes in view of Ventura as applied to claim 14 above, and further in view of Widrich (US 6,338,314).

Haynes, as modified, discloses the claimed invention except the is not a pad added to the base fabric 40. Widrich discloses a pet housing wherein a frame 40 is fitted with a fabric and a pillow top is supplied adding comfort and insulation for the pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a pillow top to the base fabric 40 in order to provide additional comfort and insulation for the pet.

### *Conclusion*

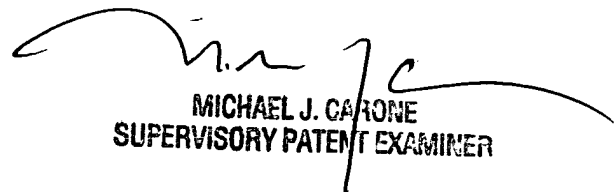
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER